

## **Declaratory Ruling 86-8561-M**

### **Reporting of salaries and compensation by health maintenance organizations**

September 30, 1986

#### **I. BACKGROUND**

On June 25, 1986, Health Central, Group Health Plan of Southeast Michigan, Michigan HMO Plans, Independence Health Plan, Comprehensive Health Services of Detroit, Total Health Care, and Association of HMO's in Michigan (the applicants) filed a request with the Commissioner of Insurance (Commissioner) for a declaratory ruling. The applicants stated:

Please accept this as a formal request for a declaratory ruling pursuant to the Michigan Administrative Procedures Act on the question of whether health maintenance organizations must file salary information with the Michigan Insurance Bureau for officers, directors, and persons receiving over \$40,000. In addition, this is a request for a ruling as to whether such information should remain confidential pursuant to the common law right of privacy and the Michigan Freedom of Information Act.

The applicants originally sought a court determination of these issues. They did so by filing, on March 23, 1983, a complaint for declaratory and injunctive relief in the Ingham County Circuit Court. The case reached the Michigan Court of Appeals. That court determined that the Circuit Court lacked subject matter jurisdiction to address the issues because the applicants had failed to first seek a declaratory ruling from the Commissioner on the issues. The court's opinion was issued on June 3, 1986, in *Health Central, Group Health Plan of Southeast Michigan, Michigan HMO Plans, Independent Health Plan, Comprehensive Health Services of Detroit, Total Health Care, and Association of HMO's in Michigan v Nancy A. Baerwaldt, Commissioner of Insurance*, No. 82-158.

#### **II. ANALYSIS**

Section 63 of the Administrative Procedures Act of 1969, as amended, MCLA 24.263; MSA 3.560(163), provides the general framework and standards governing declaratory rulings. It provides:

On request of an interested person, an agency may issue a declaratory ruling as to the applicability to an actual state of facts of a statute administered by the agency or of a rule or order of the agency. An agency shall prescribe by rule the form for such a request and procedure for its submission, consideration and disposition. A declaratory ruling is binding on the agency and the person requesting it unless it is altered or set aside by any court. An agency may not retroactively change a declaratory ruling, but nothing in this subsection prevents an agency from

prospectively changing a declaratory ruling. A declaratory ruling is subject to judicial review in the same manner as an agency final decision or order in a contested case.

The Insurance Bureau has prescribed by rule procedures regarding declaratory rulings. R 500.1041 of the 1979 Michigan Administrative Code states:

A request for a declaratory ruling shall include both of the following:

- (a) A statement of facts, which shall state all facts known to the applicant which are or may be relevant to a determination of the applicability of a rule, statute, or order and shall certify to the existence of the actual state of facts set forth and to the submission of all relevant facts
- (b) A statement of all statutes and rules known to the applicant which are relevant to a determination of the request and which the applicant seeks to have considered by the commissioner in making the ruling. The applicant shall certify that he or she has identified all statutes and rules which the applicant seeks to have considered by the commissioner in making the ruling.

The facts and law contained in the applicants' request for declaratory ruling, as quoted above, are broadly stated. They have been set forth in detail in the earlier court proceedings. The request for the declaratory ruling is taken in this context.

As the applicants are fully aware, the Commissioner was a party to the court action. Hence, the Commissioner's position on the issues for which the applicants now seek a declaratory ruling has been articulated in briefs to the court. Rather than repeat the analysis expressed in the briefs, the Commissioner incorporates by reference the Appellant's Brief (the Commissioner's Brief), dated June 17, 1985, filed in Health Central, cited above. A copy of the Commissioner's Brief is attached. There, the Commissioner concluded that:

1. The Commissioner is authorized by law to require HMO's to report salaries, compensation, and emoluments on the supplemental schedule of their annual reports. (Commissioner's Brief, pp 7- 12) The applicants expressly acknowledged this in the Court of Appeals. (Commissioner's Brief, p 4)
2. Such salary information reported to the Commissioner by HMO's is not confidential under the Michigan Freedom of Information Act. Such information constitutes a public record available for public inspection. Disclosure of the salary information does not constitute a clearly unwarranted invasion of an individual's privacy. (Commissioner's Brief, pp 21- 23)

3. There is no common law right to privacy prohibiting disclosure of salary information by the Commissioner. (Appellant's Brief, pp 16- 23)

While the conclusion as to the common law is correct, it is beyond the scope of a declaratory ruling. Section 63 of the APA limits declaratory rulings to the applicability to an actual state of facts of a statute administered by the agency or of a rule or order of the agency.

### **III. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Based upon the foregoing considerations, it is FOUND and CONCLUDED that:

1. The Commissioner has authority to issue this declaratory ruling pursuant to Section 63 of the APA.
2. The Commissioner is authorized by law to require HMO's to report salaries, compensation, and emoluments on the supplemental schedule of their annual reports.
3. Such salary information reported to the Commissioner by HMO's is not confidential under the Michigan Freedom of Information Act. Disclosure of the salary information does not constitute a clearly unwarranted invasion of an individual's privacy.
4. This declaratory ruling is limited to the reporting of salary information by an HMO to the Commissioner and the disclosure of that information by the Commissioner to the public.
5. This declaratory ruling is limited to the statutes and rules identified by the applicants in their request for declaratory ruling and those statutes and rules identified by the Commissioner in the Commissioner's Brief.
6. There is no common law right to privacy prohibiting disclosure of salary information by the Commissioner. Section 63 of the APA, however, does not authorize the Commissioner to address, in the context of a declaratory ruling, whether salary information is confidential pursuant to a common law right of privacy.

### **IV. RULING**

I, therefore, enter this declaratory ruling that:

1. The Commissioner is authorized by law to require HMO's to report salaries, compensation, and emoluments on the supplemental schedule of their annual reports.

2. Such salary information reported to the Commissioner by HMO's is not confidential under the Michigan Freedom of Information Act. Disclosure of the salary information does not constitute a clearly unwarranted invasion of an individual's privacy.

The Commissioner specifically retains the authority to prospectively change this declaratory ruling as he shall deem just, necessary, and appropriate.

Herman W. Coleman  
Commissioner of Insurance